

REMARKS

The above Amendment is submitted so as to be responsive to the Office Action issued on September 9, 2004, and is believed to present all of the claims, drawings, and specification in better form for allowance by responding to each of the different objections and rejections presented by the Examiner in the Office Action.

With regard to the drawings, the Examiner has indicated that Figures 1, 2, 3A and 3B are objected to under 37 CFR 1.83(a). In response thereto, Drawings 1, 2, 3A, and 3B, showing changes in red ink are submitted herewith for approval. Formal drawings reflecting the proposed changes will be submitted upon an issuance of a Notice of Allowance.

The Examiner has also objected to the specification on two different grounds. First, the Examiner noted several informalities on pages 5 and 7, which the undersigned has corrected in the specification as indicated above. Second, the Examiner has objected to the specification under 37 CFR 1.75(d)(1) as failing to provide a proper antecedent basis for the “upper portion”, “lower portion”, “wall”, “elongated opening”, “splash guard”, and “arcuate extension” set forth in claims 12 and 25. In response, the involved claims have been revised to recite the word “part” as found in the specification, in place of the word “portion”. With regard to the remaining terms cited by the Examiner, the Examiner is directed to page 4, line 14, and page 5, last paragraph, for recognition of the support and antecedent basis for the usage of the referenced terms.

In addition, Claims 16-18 have been rejected under 35 U.S.C. 112, first paragraph, as allegedly containing subject matter which was not described in the specification in such a way

as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In this regard, the Examiner contends that these claims depend from claim 12, which recites “a lower opening adapted to be in substantial alignment with a toilet”, something which cannot structurally coexist given that the Figure 2 embodiment claimed therein includes bars that would prohibit the commode from being aligned with a toilet. In response, claim 12 has been modified to recite a circular bottom described on page 7, so that any potential confusion might be eliminated from this claim, as well as in any other dependent claims therefrom, such as claims 15, 16, 17, and 18. Hence, it is respectfully requested that this ground of rejection be withdrawn.

Claims 15 and 17 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. Specifically, the Examiner believes that Claim 15 is unclear as to whether the commode is intended to be part of the claimed structure of the pan connected thereto, and that claim 17 is redundant in view of claim 12.

In response, the changes described in the preceding paragraph relating to dependent claims 15, 16, 17, and 18 remedy any potential confusion regarding the claimed structure. In particular, claim 15 has been specifically revised so as to detail the rim as being “capable of releasable engagement” with a commode, rather than *being* releasably engaged with a commode. This change to claims 15 and 17 will therefore eliminate any possible confusion by restricting the commode to being outside the claimed structure of these particular claims. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 12-18, 25 and 26 have been rejected under 35 U.S.C. 102(b) as being

anticipated by Battiston. In response, the Examiner is reminded that 35 U.S.C. 102(b) requires that a potential reference “be patented, printed or described” ... “more than one year prior to the date of application for the patent” in question. In this case, this ground of rejection is required to be withdrawn because the “Battiston” reference has the exact same filing date as the present application (e.g., November 2, 1999), and therefore is ineligible for use in a rejection under 35 U.S.C. 102.

Claims 12-17, 25 and 26 have also been rejected under 35 U.S.C. 102(b) as being anticipated by Carnahan et al. The undersigned wishes to draw the Examiner’s attention to the fact that the Carnahan reference is a “mattress commode”, and as such, is not at all similar to the present invention, as the claimed invention is directed to a splash guard pan that can be situated in either a stand alone commode, or in a commode that fits over a toilet. Clearly, the Carnahan reference is not directed to such a use, nor does it disclose the gently sloping arcuate surface of the present invention. As such , Carnahan could not be used stand alone or over a toilet, and would *induce* splashing back at a user of any commode, given the straight, perpendicular walls of its “splash guard 16”. To this end, it is requested that this rejection be withdrawn by the Examiner.

Claim 18 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Carnahan et al. and Davis. In response, the undersigned wishes to reiterate the above-detailed inapplicability of the Carnahan mattress commode over the present invention, and add that there is simply no motivation to combine Carnahan with Davis. Furthermore, it is noted that Davis is similarly insufficient as a possible reference over the present invention because Davis is directed to a commode itself, and not a pan that can be used within a commode. As

such, it is respectfully requested that this rejection be withdrawn.

Claims 12-17, 25 and 26 have also been rejected under 35 U.S.C. 103(a) as being unpatentable over Klatt and Rose et al. This rejection is traversed. In response, applicant notes three separate points of significance.

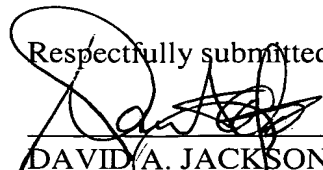
First, it is first noted that Klatt is a flawed reference in that it is directed solely to a automobile storage compartment that may *store* different articles, including a “portable toilet”, but in no way teaches a pan, much less a pan that can fit within a commode, or even a pan that has a splash guard. Second, it is noted that the Rose reference is at best, a bucket with a tiny pour spout at the top for pouring contents of the vessel, and given the clear lack of a gently sloping surface, does not prevent splashing by a commode user whatsoever. Third, it is noted that there is simply no motivation to combine these two references, and that mere recitations to the effect that “it would have been obvious to one skilled in the art to associate an ‘arcuate extension’ splash guard with the Klatt pan in order to facilitate waste flow” does not suffice under current patent law as a basis for the motivation to combine.

Under well settled legal principles, the Examiner is obligated to provide a “convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). Furthermore, the Examiner must identify specifically the reasons why one of ordinary skill in the art would have been motivated to select the references and combine them. *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998); *C.R. Bard, Inc. v. M3 Sys., Inc.* 157 F. 3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998). Moreover, in showing a motivation to combine reference, a clear and particular basis

must be put forth. *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) (holding that "Broad conclusory statements regarding the teaching of multiple references, standing alone are not evidence" of obviousness). In addition, the Examiner is also required to show that such an artisan would have had a reasonable expectation of success in combining the cited references. *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991). Clearly, the burden of proof for obviousness has not been satisfied in this case, and further considering the individually enumerated deficiencies of each reference above, it is respectfully requested that the Examiner withdraw this ground of rejection.

Lastly, the Examiner has further rejected claim 18 under 35 U.S.C. 103(a) as being unpatentable over Klatt and Rose et al. and in further view of Davis. In response, the undersigned wishes to reiterate each of the above arguments in the preceding paragraph pertaining to Klatt and Rose, and further add the point that Davis is a *commode*, and does not teach a *pan*, much less a pan that has a splash guard or a pan that has the ability of to cooperate with a commode. As such, it is respectfully requested that this ground of rejection be withdrawn.

Accordingly entry of the above and favorable consideration of the arguments presented above is courteously solicited, and notice of allowance is respectfully requested.

Respectfully submitted,


DAVID A. JACKSON
Attorney for Applicant(s)
Registration No. 26,742

KLAUBER & JACKSON
411 Hackensack Avenue
Hackensack, NJ 07601
(201) 487-5800